

### REMARKS

Reconsideration and withdrawal of all grounds of rejection, and allowance of the pending claims are respectfully requested in view of the above amendments and the following remarks. Claims 1-20, as amended, remain pending herein.

Claims 1-20 stand rejected under 35 U.S.C. § 102(h) in view of Rom (EP 0589552 A2). Applicant respectfully traverses this ground of rejection for the reasons indicated herein below.

Claim 1 has been amended to recite in part:

the first access point maintaining a message buffer for the mobile device until the switch of the mobile device from the first access point to the select access point is complete; and  
defining a plurality of access classifications associated with the mobile device and at least one of the one or more other access points of the plurality of access points and selecting the select access point based at least in part on one or more access classifications.

Support for the above amendment to claim 1 is found in the specification at least at page 2, lines 18-22, and page 5, lines 10-17 and original claim 10. Claim 10 has been amended to recite some of the access classifications. Apparatus claim 11 has a similar amendment as claim 1 regarding the switch control module determining classifications, and claim 14 was amended to include a recitation regarding the message buffer (disclosed at page 5, lines 10-17).

Applicant respectfully submits that none of the present claims would have been anticipated by Rom, as this reference fails to disclose or render obvious all of the claimed elements.

For example, while the Office Action alleges that Rom discloses defining access classification associated with the mobile device at col. 5, lines 49-57 and col. 6, lines 40-55, Applicant respectfully submits that Rom only discloses quality of the signals and is completely silent, for example, about a plurality of access classifications associated with the mobile device and at least one or more other access points. In addition, present claim 20 recites preferred, acceptable, forbidden, and subscription level as some of the criteria that may be used by the first access point. Nor would the recitations regarding access classifications have been obvious to a person of ordinary skill in the art over Rom, and was not within the ordinary level of skill in the art (*KSR International v. Teleflex*, 127 S.Ct. 1727, 82 USPQ2d 1385 (2007)).

Finally, with regard to claims 1 and 14, Rom fails to disclose, suggest or otherwise render obvious a buffer associated with the first access point for buffering message for the mobile device until the transfer to the selected access point is complete.

For at least the above reasons, Applicant respectfully submits that none of the present claims would have been anticipated by Rom, as this reference fails to disclose all of the elements recited in the present claims.

In accordance with MPEP 2131, under 35 U.S.C. §102, according to the United States Court of Appeals for the Federal Circuit, a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference” (*Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (emphasis added)). Therefore, to reject a feature, which is alleged to patentably distinguish the claim containing such feature, as being anticipated by a prior art, the Office Action must establish that the same feature is

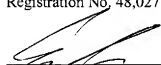
present in the prior art reference. As Rom fails to disclose each and every element as set forth in at least independent claims 1 and 11, these claims are not anticipated by the reference. Nor would any of claims 1-20 have been obvious at the time of invention as being within the ordinary level of skill in the art.

Applicant further submits that each of the claims dependent from one of claims 1 or 11 is allowable at least for their dependency from an allowable base claim, and because of separate basis for patentability. For example, claim 14 recites a buffer associated with the access point that stores data for the mobile device until the transfer is complete.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Aaron Waxler  
Registration No. 48,027

  
By: Steve Cha  
Attorney for Applicant  
Registration No. 44,069

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**Mail all correspondence to:**  
Aaron Waxler, Registration No. 48,027  
NXP, B.V.  
NXP Intellectual Property Department  
M/S41-SJ  
1109 McKay Drive  
San Jose, CA 95131  
Phone: (408) 434-3000  
Fax: (408) 474-9081